

PRACTICAL OPERATION OF THE 1995 UNIDROIT CONVENTION

ISLAMIC REPUBLIC OF IRAN

I. Information regarding the application of the UNIDROIT Convention (referring to the provisions of the Convention)

1. Ratification, approval, acceptance or accession

(a) Is your country a Party to the UNIDROIT Convention? **If so:**

- *Were implementing regulations required, and if so, in respect of which points?*
- *Did ratification/accession pose any particular difficulties and if so, what were these difficulties, and how were they resolved?*
- *Did the use of the legal concepts employed in the Convention create any problems?*

The Single Article Act concerning Accession of the State of the Islamic Republic of Iran to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects passed by the Iranian Islamic Parliament, on August 21, 2000.

At the time of depositing the instruments of ratification and approval, we did not present a declaration envisioned at Article 3 (5) of the Convention.

2. Definition

In order to benefit from the system set in place by the UNIDROIT Convention, "cultural objects" need not be designated by the State, as is on the contrary required under the 1970 UNESCO Convention.

- *Which is the definition retained in your country's legislation?*

Article 1 of the Act on Preservation of National Works enacted November 03, 1930, considers as national works all industrial works, buildings and places constructed prior to the end of Zandieh dynasty in Iran, whether movable or immovable, in which case they shall be placed under the protection and supervision of the Government. On May 17, 1979 also, a Single Article Act titled "Legal Bill on Preventing Clandestine Digging and Illegal Excavations intended to obtain Historical Relics, which are according to International Organizations 100 Hundred Year in Age or More" was passed by the Revolutionary Council. Paragraph 3 of this Single Article defines antiquities as "objects that by international regulations one year or more has passed since their production or making". The Act on the Statute of the Iranian Cultural Heritage Organization enacted April 21, 1988 also has defined "cultural heritage" in its Article 1. Furthermore, in Para. 9 of its Article 3, the Organization has been vested with the task of identifying and taking possession of all the items of cultural and historical value, which are considered as cultural heritage, and which have been seized by respective authorities. Article 561 (Note) of the Islamic Penal Code enacted September 24, 1996 has given the authority to find if an item is of historical-cultural nature to the State Cultural Heritage Organization. Article 1 of the Bylaw on Cultural, Artistic and Historical Properties of Public and Governmental Entities

enacted February 26, 2003 adopted by the Council of Ministers has defined cultural- historical and artistic properties as the objects that are of significance from scientific, historical, cultural, archeological, paleontological and artistic perspectives and that one year has passed since their production or making. The same provision has enumerated various types of those properties in 6 paragraphs and 3 notes. Article 1 of the Bylaw on Management, Regulation, Supervision and Protection of Authorized Movable Cultural- Historical Properties enacted August 01, 2005 has made all non-State owned cultural- historical and artistic works, which hold the scientific and technical specifications defined in the State owned Cultural- Historical and Artistic Properties Bylaw subject of this bylaw, defining the whole category of Cultural- Historical and Artistic Properties in its Article 5.

3. Theft

(b) Claims for restitution of stolen cultural property brought under the Convention

- *Has your country (or have any of its nationals) ever brought such a claim for restitution? What results were obtained (please enclose the relevant decision)?*
- *Has your country (or have any of its nationals) ever been the subject of such a claim for restitution? What results were obtained (please enclose the relevant decision)?*

Thus far, our State has not applied for return of stolen or illegally exported cultural objects in accordance with the procedure adopted in this Convention, nor has it received any information from its nationals to the same effect or made a claim seeking such return as relief.

(d) Claims for restitution of stolen cultural property **brought in accordance with other procedures**

- *Has your country (or have any of its nationals) ever brought such a claim for restitution? What was the procedure chosen? What results were obtained?*
- *Has your country (or have any of its nationals) ever been the subject of such a claim for restitution? What was the procedure chosen? What results were obtained?*

Iran has already resorted to legal proceedings in several instances for the return of illegally-exported properties, including 18 items belonging to Jiroft Region that were to be put on auction by Barakat Gallery in the United Kingdom, which items were finally returned to the country. The proceedings also include a claim for the return of the objects belonging to Khorvin Region, which had been exported by a Belgian national before the Islamic Revolution and with the collaboration of Belgian diplomat, which claim is pending before Appellate Courts of Belgium.

As regards return of stolen cultural- historical properties also, it ought to be noted that our State resorted to legal action, applying for the return of an Achaemenian soldier's head engraved stone that was about to be auctioned by Christies in London; but its application was denied on the ground that it was barred by the statute of limitation.

Regarding non-judicial measures for the return of cultural- historical properties to our country in the period since adoption of the UNIDROIT Convention in the year of 1995, it should be noted that two consignments one of which consisted of certain cultural- historical objects appertaining to Jiroft region that had been uncovered by illegal excavation and exported, were found in Heathrow Airport in London, and were returned to the Country. We then held an exhibition of those objects in the National Museum, and printed a catalogue for the exhibition that contained pictures of the objects. The other consignment comprised a large number of glazed tiles of Imamzadeh Sultan Ahmad situated in City of Amol, which were delivered to the Embassy of the Islamic Republic of Iran in London through diplomatic channels, after having been detected and their Iranian origin identified, thanks to the INTERPOL cooperation. In the same line, a ceramic object was found in Romania and delivered to the Iranian Embassy authorities. Furthermore, a consignment containing certain ceramic historical-cultural objects was also detected in the United Arab Emirates "UAE" and was returned to the country via diplomatic cooperation.

(e) A cultural object that has been unlawfully excavated (or lawfully excavated but unlawfully retained) shall be **considered stolen** when consistent with the law of the State where the excavation took place (Article 3(2)).

- *Does your legislation provide for State ownership of such objects? Please specify*
- *Has your country encountered difficulties in obtaining recognition of such ownership in restitution proceedings brought before foreign courts? Please provide examples.*

Article 14 of the Act on Preservation of National Works (1930) recognized as belonging fully to the Government anything found by the Government in the course of scientific or cultural excavations in a place and during a season. Principle 83 of the Constitution of the Islamic Republic of Iran prescribes that monuments and governmental properties that are considered to be national treasures may not be transferred to others, save by approval of the Islamic Parliament, provided that they are not unique and one of their type. Article 26 of the Civil Code also bars private ownership of governmental properties such as castles, museums, historical monuments and the like that are apt for public benefit or public use.

4. Illegal export

(a) The conventional mechanism is based on breach of **national legislation** prohibiting the export of (certain) cultural objects.

- *Does your country have such legislation and if so, what type of object does it cover (please specify any references, where applicable)?*

With regard to the laws and regulations governing purchase and sale and export of cultural- historical properties, it ought to be noted that Article 44 of the Customs Affairs Act of May 08, 1928 has prohibited export of antiquated and archeological objects save by authorization of the Ministry of Culture and Art. The 1930 Act, particularly in its Articles 9 to 19, had determined the manner of purchaser and sale and export of the objects earned from scientific or trade

diggings, depending on whether they are the discoverer's or the Government's share. It should be noted that the same law had excluded buildings and building components from the ambit of the divisions mentioned in Article 14. The same law also laid down penalties for traffickers of the items registered in national works list. In its final provisions also the said law specified manner of export and obtaining respective licenses. By the law enacted July 13, 1975, the import and export of genuine antiquated objects and cultural and artistic works were exempted from payment of customs duties. The Act also prohibited export of cultural properties mentioned in the National Works List or those that were susceptible for such registration, and made such export subject of punishment laid down in Article 127 (4) of the Criminal Law then in force. The act however authorized export of other cultural properties subject to certain conditions. After triumph of the Islamic Revolution, the abovementioned Single Article Act adopted by the Revolutionary Council on May 17, 1979 absolutely prohibited every type of digging and excavation aimed at obtaining antiquities and historical works; provided a discovery fee for fortuitous finders; and laid down the penalties of imprisonment and seizure of the property for those who offer the uncovered objects for purchase and sale in contravention of the arrangement set forth therein. This was followed by another Act dated January 12, 1980, whereby the Revolutionary Council prohibited export of all antiquities and artistic objects. In the year of 1990, the Act on Punishment of the Persons Sabotaging in the State Economic System, considered as illegal trafficking any attempt to export cultural heritage or national wealth, even where it does not end in its actual export and considered the said properties subject matter of illegal trafficking, which will be seized for the benefit of the Government. Article 12 of the Trade and Industrial Free Zones Exports, Imports and Customs Affairs of May 09, 1994 bars export of antiquities, and handwritten and old books, genuine cultural works and various coins by the passengers who exit the country through trade and industrial free zones. Finally, Chapter Nine of the 5th Book of the Islamic Penal Code enacted September 24, 1996 not only considered as illegal trafficking any attempt to export historical-cultural objects even where it does not end in actual export thereof, but also criminalized any attempt for digging and excavation with the intention to acquire historical- cultural properties; and made the culprits subject to punishment. The same law also prohibited purchase and sale of historical-cultural objects acquired by illegal digging.

(b) Article 17 of the Convention requires Contracting States to provide the Depositary with **written information** in one of the official languages of the Convention (English and French) **concerning the legislation regulating the export** of its cultural objects, and to update that information from time to time.

- *Did your country provide the Italian Government (the Depositary of the Convention) with the text of your country's relevant legislation or a summary thereof, within six months of ratification or accession, and has that information been updated since that time?*

Some of the forgoing laws have already been translated and placed at eth disposal of the Portals Laws and Regulations Section of the UNESCO. However, we have no record of having sent the translated texts of the foregoing laws to the Convention Depositary (the State of Italy).

II. Other legal, judicial and administrative measures taken by States – impact of Convention

2. Bilateral or multilateral agreements

(a) The Convention “initiates a process that will **enhance international cultural cooperation**” (Preamble) and offers the opportunity to States of entering into “**agreements** with one or more Contracting States, **with a view to improving the application of this Convention in their mutual relations**” (Article 13(2)).

- *Has your country entered into such agreements, or is it planning to do so ? Please specify.*
- *If you are a State Party to the UNIDROIT Convention and have entered into such an agreement, did you send a copy of that agreement to the Depositary (please enclose a copy if appropriate)?*

This Office in collaboration with the Office for International agreements, Center for International Legal Affairs, the Presidency of the Islamic Republic of Iran has prepared a draft agreement for bilateral cooperation for the return, and for preventing import, export and illegal transfer of cultural-historical properties, using UNESCO proposed texts as reference. The draft has been offered to a number of neighboring countries, after the text and translation thereof had been approved by the Vice President of the Islamic Republic of Iran for Legal Affairs, and after it had passed the formalities of approval, in coordination with the International Relations Affairs Office of this Organization, through the International Legal Affairs Department and other authorities in the Ministry of Foreign Affairs. No fruitful result however has yet been achieved.

The foregoing is submitted for information and use.